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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,773	10/22/2003	Guilhem Rousselet	LOREAL 3.0-036	6962
530 7590 03/18/2008 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER RUNNING, RACHEL A	
			ART UNIT	PAPER NUMBER
			3732	
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			03/18/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/690,773

**Applicant(s)**

ROUSSELET, GUILHEM

**Examiner**

RACHEL A. RUNNING

**Art Unit**

3732

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 5, 8, 10-13, 15, 16 and 19-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 8, 10-13, 15, 16 and 19-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 8, 10-13, 15, 19-23, 25, and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Swick et al. (US 4,655,000).

Swick et al. disclose a device for the combined presentation of first and second items comprising a first element (16) detachably securable to the first item, the first element including a pair of arms (28, 29) having free ends defining a first opening (24) the pair of arms are disposed on opposite sides of a central axis and are resiliently displaceable relative to one another (see Figure 2; column 2, lines 5-15). A second element (14) is detachably securable to the first item or a second item the second element including a pair of arms (28, 29) having free ends defining a second opening (24) the pair of arms being disposed on opposite sides of a central axis and being resiliently displaceable (see Figure 2; column 2, lines 5-15). A connecting member (12) has a first end (17) connected to the first element (16) opposite the first opening and having a second end (15) connected to the second element (14) opposite the second opening (see Figure 3). The connecting member is resiliently foldable between a relaxed configuration and a folded configuration (column 1, lines 32-41). The free ends of the pair of arms of the first element are spaced apart by a first distance in a nonuse

condition in which the first element is not engaged with the first item, the first distance being less than the cross-sectional sizes of the first item wherein the pair of arms of the first element resiliently deform so the free ends of the first element are spaced apart by a distance greater than the first distance to receive the first or second item (column 2, lines 20-30 and column 3, lines 5-10). The pair of arms of the first element together form a portion of a circle the portion of the circle extends at least 180 degrees from the free end of one of the arm of the pair of arms to the free end of another arm of the pair of arms (see Figure 3). The device is formed from at least one moldable plastic material (column 1, lines 32-36). The pair of arms of the first element and the second element define an internal circular cross-section (see Figure 2). The first element has a size and shape and the second element has a size and shape that is the same as the first element (see Figure 2).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 16, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swick et al. (US 4,655,000).

Swick et al. disclose the claimed invention except for the portion of the circle extending between 190-310 degrees from the free end of the one arm of a pair of arms

to the free end of the other arm of the pair of arms, and the internal cross-section of at least one of the first element or the second element is between 1 and 10 percent less than the cross-section of the first item or the second item. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the portion of the circle extend between 190-310 degrees from the free end of the one arm of a pair of arms to the free end of the other arm of the pair of arms, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the internal cross-section of at least one of the first element or the second element be between 1 and 10 percent less than the cross-section of the first item or the second item, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

5. Claims 26-28, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardi, Jr. (US 6,138,688) in view of Swick et al. (US 4,655,000).

Lombardi, Jr. discloses a first item (15) in the form of a first receptacle containing a first product and a second item (16) (see Figure 2). The device includes a first element (12, 13), a second element (13, 14) and a connecting element (10) the first element being detachably securable to the first item (15) the first element includes a pair of arms having free ends defining a first opening (see Figures 3 and 5). The

second element (13, 14) is detachably securable to the second item (16) the second element includes a pair of arms having free ends defining a second opening therebetween (see Figures 3 and 5). The first item and the second item have a cross-section that is partly circular (see Figures 6 and 7). The first product is make-up for the lips and the second item is a product that modifies the appearance of the first product and the second item is a receptacle for a second product different from the first product (column 3, lines 1-15). Lombardi, Jr. does not disclose the connecting element being resiliently foldable between a relaxed configuration in which the first element and the second element are substantially coplanar and a folded configuration in which the first element is coaxially aligned with the second element.

Swick et al. teach connecting member (12) having a first end (17) connected to the first element (16) opposite the first opening and having a second end (15) connected to the second element (14) opposite the second opening (see Figure 3). The connecting member is resiliently foldable between a relaxed configuration and a folded configuration (column 1, lines 32-41). At the time of the invention, it would have been an obvious design choice to modify the connecting device of Lombardi, Jr by substituting the connecting device as taught by Swick et al. to provide a connecting device that is resiliently foldable between a relaxed configuration in which the first element and the second element are substantially coplanar and a folded configuration in which the first element is coaxially aligned with the second element, since substitution of parts which provide the same function, in this case that of connecting two elements together, would be within the level of ordinary skill in the art.

***Response to Arguments***

6. Applicant's arguments filed December 17, 2007 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **RACHEL A. RUNNING** whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rachel A. Running/  
Examiner  
Art Unit 3732

03/04/2008